

EX PARTE OR LATE FILED

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Fax: 617/542-2241

Telephone: 202/434-7300
Fax: 202/434-7400
Telex: 753689

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Charon J. Harris

May 3, 1996

William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

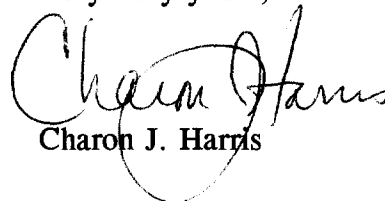
Re: Ex parte Communication In CS Docket No. 96-46

Dear Mr. Caton:

Attached please find an original and one copy of summaries of selected comments and reply comments filed in the captioned docket on Open Video Systems. Pursuant to 47 C.F.R. § 1.1206, please include these summaries in the record in the captioned docket.

Please let me know if you have any questions.

Very truly yours,


Charon J. Harris

Enclosures
cc: John Logan

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COMMENTS OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Non-Discrimination

Video Programming Providers

Commission should maximize number of MVPDs that can compete to utilize an OVS facility. (3) Cable operators should be permitted to become OVS operators. (11) Commission should establish safeguards to prevent discrimination. (4)

Channel Capacity

Flexible use of capacity by OVS operators should not permit them to favor their affiliated video programmers. (5) Because OVS operators are not required to build a particular level of capacity, MPAA is concerned that OVS operators may not have incentives to meet demand for capacity, especially for unaffiliated entities. (4) The Commission should therefore provide incentives for OVS operators to expand capacity. (4)

Channel Sharing

Channel sharing OVS operators should not be allowed to use channel sharing in a discriminatory fashion; while sharing will maximize the open nature of OVS, OVS operators should not be able to make unilateral decisions regarding which channels are shared. (6-7) Any channel licensed by a programming vendor to more than one MVPD should be placed on a shared channel. (7)

Title VI Obligations

The Commission should protect against the possibility that MVPDs may attempt to coerce exclusivity or seek other advantages from OVS operators. (9) OVS operators should therefore be subject to Section 616, the program access provisions, and Section 628(j). (10)

Network Non-Duplication, Syndex

If a broadcast signal is carried pursuant to an OVS operator's must-carry obligations, the OVS operator should be required to comply with these obligations. (12) If a station elects retransmission consent, then the individual MVPDs with which the station enters such an agreement should be responsible for compliance. (12) Must-carry obligations should apply, and the set-aside should be based on total OVS capacity. (12-13) Retransmission consent should be permitted. (14)

Cost Allocation

Just, reasonable, and non-discriminatory rates are important. (8-9) MPAA recommends the Commission establish a rate formula that produces the lowest possible non-

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discriminatory rate consistent with the OVS operator's cost. (8) Specific cost allocation requirements should be part of the certification process to prevent cross-subsidization.

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Non-Discrimination

Video Programming Providers

Notification of the establishment of an OVS system is important. (8) OVS operators should be required to give 60 days notice before commencement of service. (9) OVS operators should be required to give written notice to each broadcast station whether they will elect must carry or retransmission consent. (9)

Channel Sharing

NAB favors channel sharing. (9) OVS operators should administer channel sharing arrangements. (10)

Title VI Obligations

Network Non-Duplication, Syndex, etc.

Commission should exclude must-carry set-aside and stations carried under retransmission consent from the total OVS capacity. (3) Otherwise OVS operators would not have incentives to carry these signals. (3)

OVS operators must comply with the exclusivity rules as written. (11) Must carry stations should be available to all OVS subscribers. (12) OVS operators should not be permitted to use the design of their system to avoid carriage obligations. (14) Although it will probably be unnecessary given the huge capacity proposed for OVS systems, the Commission should compel minimum carriage of broadcast stations where necessary. (14)

Commission should apply channel positioning rules in Section 614(b)(6). (16) In addition, the OVS operator should display at the beginning of program guide the identity of broadcast stations available, permit subscriber access to broadcast stations without the use of a gateway, ensure that transmission of video programming occurs without alternation, and that the last viewed channel is the also the first viewed when the viewer turns on the television set/receiver. (17)

Other

Important to use the same technical standards. (5-6) Commission should ensure that OVS does not interfere with broadcast television and should apply the FCC TV interface device standards. (7)

As for dispute resolution, NAB believes that all parties should remain entitled to seek all remedies under the Communications Act, federal, and state law. (17)

COMMENTS OF SEATTLE DEPARTMENT OF ADMINISTRATIVE SERVICES

Non-Discrimination

Video Programming Providers

OVS operators should be able to limit competing cable operators from providing video programming over an OVS system. (2) Cable operators should not be permitted to convert cable systems into OVS systems, but they should be able to enter new markets as OVS operators. (2) Commission should preserve the ability for non-affiliated video programmers to obtain carriage. (3)

Channel Capacity

With only one additional video programmer, OVS operators should be limited to 50% of capacity. (3) Commission should provide for open enrollment periodically so that new programmers can access OVS systems. (3)

Channel Sharing

As for channel sharing, the Commission should pay attention to copyright fees and how they are assessed. (3)

Title VI Obligations

PEG, Leased Access

Local franchising authorities should be permitted to inform OVS operators of their PEG requirements so that they meet the PEG obligations of cable operators. (1) OVS operators should interconnect with cable operator PEG feeds and the franchise authority should determine whether cost sharing is appropriate. (1) PEG and must-carry channels should be akin to the basic cable tier. (2)

COMMENTS OF THE TEXAS CITIES

Non-Discrimination

Video Programming Providers

OVS operators should not be permitted to favor unaffiliated programmers. (3) Channel capacity, use of excess capacity, channel positioning, and pricing mechanisms should not be used to discriminate in favor of affiliated programmers. (3) All video programmers should have equal rights to channel capacity, location, identification, and nondiscriminatory rates. (4-5) Most-favored nation clauses could be explored to ensure nondiscriminatory rates. (5)

At certification, OVS operators must be required to publish notice that capacity will be available, to notify local franchise authorities, to ensure that PEG requirements will be met, to pay fees for the use of public rights of way, to treat all programmers in a non-discriminatory fashion, and to notify cable operators in overlapping service areas. (10-11)

In order to ensure competitive parity, OVS operators should pay fees that are comparable to those paid by cable operators. (16) Fees should reflect the programming offered by the OVS operator, its affiliates, and unaffiliated programmers. (16)

Title VI Obligations

PEG needs are local in nature, and OVS operators must meet PEG requirements of each community they serve unless they receive consent to the contrary from the pertinent jurisdiction at the time of certification. (8-9) PEG programming should not be shared because that would reduce cable operators' PEG burdens. (9)

Other

OVS access to public rights of way should be managed by local governments. (14) Each locality will assess space availability, methods of allocation, notification, insurance, bonding, construction safeguards, etc. (14)

Commission should not certify cable operators as OVS operators, especially in the same franchise area. (5-6)

COMMENTS OF THE NATIONAL LEAGUE OF CITIES, ET AL.

Non-Discrimination

Video Programming Providers

OVS is distinct from cable service, and must be open and nondiscriminatory. (6-7) Commission must ensure just and reasonable rates, terms, and conditions. (8) OVS operators should not have any direct or indirect influence over any "unaffiliated" programmer or program packager. (9) Cable leased-access is the wrong model because it has failed to give unaffiliated programmers access to cable systems. (10) OVS operators should not be permitted to have discriminatory relationships with preferred or affiliated programmers. (11) Competition will not restrain OVS operators, so the Commission should develop specific anti-discrimination provisions. (11) Cable operators should not be permitted to become OVS operators because Congress did not use the term "cable service" to describe cable operator functions under Section 653. (47) If cable operators are allowed to become OVS operators, local consent should be required. (48) Cable operators should be allowed to provide video programming through OVS. (51)

Channel Capacity

Presence of cable operator will increase OVS operator's incentives to discriminate. (12) Commission should apply the two-thirds capacity limitation on OVS operators to analog and digital portions of the system. (14) No OVS operators should be allowed to enter relationships with programmers apart from a carrier-user relationship. (21)

Channel allocation should occur at the outset through a process whereby all video programmers receive some capacity in proportion to the total capacity available. (23) After the initial allocation, there must be an open enrollment period during which the OVS operator must reduce its channel control according to the number of video programmers seeking capacity. (23) Thereafter, subleasing or free trading of access rights may solve capacity limitation problems. (24)

Channel Sharing/Marketing

OVS operators should not be able to determine how channels are marketed or shared because OVS operators might then have impermissible editorial control. (26) OVS operators who violate the OVS rules should be required to obtain a cable franchise. (28)

Title VI Obligations

PEG, Leased Access

PEG is local in nature and OVS operators should meet specific requirements for facilities, equipment, and channel capacity. (30, 39) OVS should be under the obligation to match the PEG requirements imposed on cable operators or to negotiate with local authorities to ensure that local needs are met. (31-39) PEG channels must be available to all OVS subscribers. (42) OVS operators must translate PEG programming to make it compatible with their system requirements. (43) Fees in lieu of the franchise fees should match cable operator's obligations. (45)

Cost Allocation

Rates must be nondiscriminatory. (16) OVS operators should be permitted to set their rates without FCC approval and make contracts publicly available, including rates that the OVS operator charges itself and its affiliates. (18) Most-favored nation clauses would protect similarly situated programmers. (18) To determine the reasonableness of rates, OVS operators should be required to file financial statements reflecting rates of return and cash flow. (19) Absent rate of return regulation, the Commission should develop a "yardstick" test to ensure that rates are reasonable. (20)

Other

The Commission should ensure that OVS operators comply with local regulations governing the public rights-of-way. (52) Localities deserve to manage their public rights-of-way and to receive fair compensation for use. (52) Intrusion into public rights of way would implicate the Fifth Amendment. (56) The "fee in lieu of" provision of Section 653 does not satisfy the requirement of just compensation. (64)

Program access rules and negative option billing should apply to OVS operators. (44)

COMMENTS OF NYNEX

Non-Discrimination

Video Programming Providers

FCC should be flexible in selecting and signing up programmers. (iii) Operators should have discretion and flexibility in soliciting programmers. (8) General discretion should extend to all business decisions. (10) Objective qualification requirements for video programmers should be allowed, e.g., financial requirements, indemnification, program standards, interconnection, and other "leased access" type standards. (10-11)

Extend program access rules to video programming distributed by OVS. (iv, 20) Rules should be extended to cover programming distributed via terrestrial systems. (21) Operator should be permitted to preclude use of its system by any video programmer with an exclusive right to certain programs or favorable contract terms that preclude others from distributing that programming on the system. (12) Contracts with video programmers should not be made publicly available. (13)

Channel Capacity

FCC should give OVS operators maximum discretion to allocate and position channels. (iii) OVS operators should be allowed to administer the allocation of channel capacity. (7) Strongly objects to detailed regulation of channel allocation or positioning. (7) Use statute's general rule instead of specific provisions. (7) Allow OVS operator to allocate any way that is "non-discriminatory." (8)

OVS operator should be allowed to limit any non-affiliated video programmer to one-third total capacity where demand exceeds supply. (8) OVS operator should not be required to alter the configuration or capacity available to additional programmers until the beginning of "the next enrollment period." (8) OVS operator should be allowed to deny capacity to local cable operator if it determines that cable operator would otherwise gain access to sensitive information. (iii, 11)

Channel Sharing

FCC should give OVS operator maximum flexibility in setting up channel sharing and designating third party administrator. (iii) FCC shouldn't adopt any rules regarding channel sharing other than those demanded by the 1996 Act, e.g., "ready access" and "non-discrimination among programmers." (15)

Marketing

Limit the subscriber information non-discrimination requirement to on-screen programming menu only, not advertising, billing inserts, etc. (iv, 24) Operator should be allowed to market unaffiliated along with affiliated video programmers. (14)

Title VI Obligations

PEG, Leased Access, Must-Carry

Apply these rules in the same way as they apply to cable operators. (iii) Many cable operators that cross multiple ADIs or serve different municipalities comply with these rules - so should OVS operators. (16) OVS operators should have flexibility in complying with PEG. (16-17) These channels should not be counted against operator's total. (18) Do not deduct PEG and must-carry channels from total available capacity for purposes of determining the one-third available to OVS operator. (If 180 channels, and 10 set aside for must-carry and PEG, operator should still get 60.) (19)

Network Non-Duplication, Syndex, etc.

Apply these rules in the same way as they apply to cable operators. (iv)

Cross-subsidization, Cost Allocation

Operator should be allowed to set different rates for different kinds of programming services. (10) Rely on market to determine whether rates, terms, and conditions are reasonable - forbear from regulating under Section 401. (22-23)

Other

Certification procedure should be swift and certain, and not allow competitors an opportunity to obstruct. (iv, 26) Limit certification to bare-bones only. (26-27) Dispute resolution process should place burden of proof and burden of proceeding on the complainant. (iv) Make clear state and local regulation is preempted except for required fees. (iv) Rejection of Title II and video dialtone rules implies Congress intends light regulation. (3)

Advocates simple and expedited dispute resolution mechanism. (29) Complaints should present substantial evidence of violations. (29) Only unaffiliated video programmers should be allowed standing to file. (30)

COMMENTS OF USTA

Non-Discrimination

FCC should merely codify the Act as its rules and go no further. (i, 7-9)

Video Programming Providers

FCC should adopt streamlined procedures for notice and enrollment of video programmers. (i) Contracts should not be made publicly available. (16) Program access rules should apply. (20)

Channel Capacity

The 1996 Act adequately protects unaffiliated video programmers from discrimination in allocation of capacity and channel positioning. (i, 16-17) The one-third limit applies solely to "activated channel capacity." (18) Operators should be allowed to administer allocation of capacity. (16) Once allocated, capacity should not be adjusted until term of contracts expire. (18)

Marketing

Operator should be allowed to market all programming provided. (18)

Title VI Obligations

In general, these rules should not be applied to "disadvantage" OVS. (19)

PEG, Leased Access

PEG and leased access channels should not be counted against the one-third capacity to which the operator is entitled. (18-19)

Cross-Subsidization, Cost Allocation

No need for rate regulation. (i, 13) No common carrier regulation called for. (13.

Other

No need for enhanced dispute resolution process. (11) Specific issues should be addressed on a case-by-case basis. (11) Private dispute resolution should be emphasized. (12) FCC should elaborate minimal due process only. (12) Certification process should be streamlined. (20-21)

**COMMENTS OF BELL ATLANTIC,
BELLSOUTH, GTE, LINCOLN TELEPHONE,
PACIFIC BELL, AND SBC COMMUNICATIONS**

Non-Discrimination

This requirement is the most important factor in determining whether regulation will kill OVS. (iv) Unequivocally support approach that FCC adopt regulations that simply prohibit discrimination and adjudicate complaints on a case-by-case basis. (6) FCC should detail only factors deemed relevant to whether discrimination is reasonable. (9)

Video Programming Providers

Cable operators should have "a genuine opportunity to convert to OVS and operate them under the same rules as common carriers' OVS." (29) Operators must have discretion to design their systems. (13) Discretion includes enrollment process. (14) Operator should be allowed to refuse carriage to local cable system. (15) Rules should not require disclosure of contracts. (22) Program access rules should apply as in the cable industry. (29)

Channel Capacity

Capacity measurement should be determined by adopting Section 653(b)(1)(B) rules, and allow operators to decide how to comply. (16) PEG and leased-access channels should not be deducted from the total capacity prior to calculating operator's one-third. (17) Title VI includes these channels in defining "activated capacity." (17) Unaffiliated video programmers should not be allowed more channels than the OVS operator is allowed. (18) Operators should be allowed to administer channel allocation. (14) Operator should be allowed flexibility in determining whether to allocate digital or analog channels. (19) Detailed rules would be against legislative intent. (14) Operators should be allowed to handle changes in demand in a manner that does not disrupt service. (21)

Channel Sharing

FCC should adopt rule that permits channel sharing in the broad terms of the statute. (25)

Marketing

Operator should be allowed to market any and all programming. (21-22) Subscriber information non-discrimination requirement applies only to information provided over the system itself. (26) Do not interfere with joint marketing. (30)

Title VI Obligations

Details of compliance should be worked out in negotiations between operators and video programmers. (25-26)

PEG, Leased Access, Must-Carry

OVS operators should not be required to comply with multiple state and local PEG requirements. Instead, rules should require compliance in general and not with specific franchise area rules. (27) Must-carry and retransmission consent should apply as to cable operators. (28)

Cross-subsidization, Cost Allocation

No need for cost allocation determinations prior to certification or as a condition for such. (31) Part 64 rules are adequate. (31)

Other

As for dispute resolution, the only way to overcome presumption of legitimate conduct by OVS operator is for complainant to show intentional discrimination that was commercially unreasonable and resulted in actual and substantial damage. (v, 32-33) Certification should be streamlined. (vi, 31)

COMMENTS OF U S WEST

Non-Discrimination

Commission should not repeat video dialtone experience. (iii) The market alone will suffice to ensure that rates, terms, and conditions are reasonable. (4) Avoid traditional Title II tariff regulation. (6) Presume rates, terms, and conditions are non-discriminatory and put burden on complaining party to show otherwise. (6) Contracts should not be publicly available. (7)

Video Programming Providers

Cable companies should be allowed to operate OVS. (2) Operator should be allowed to preclude competing cable system from obtaining capacity where demand exceeds channel supply. (12) Only programming that is the subject of a unilateral decision by the operator or its affiliate should be classified as programming that is "selected" by the operator. (16) Any programming that is jointly selected by any programmers (including the operator) should not count as "selected" by the operator. (16)

Channel Capacity

Channel allocation, limits, and sharing will soon be antiquated concepts because of technology's advance. (10) Any rules regarding these should sunset. (10) Treat analog and digital separately if demand is separate for each. (11) If demand increases after allocation, capacity should be reallocated after three years. (12) Operator should be allowed to administer channel allocation. (12) There is no single best means of allocating channel capacity. (14) PEG and must-carry should not count against the operator's one-third. (17)

Channel Sharing

Operators should be allowed discretion with respect to administering any channel sharing. (14) By requiring programming to be shared, operator is not "selecting" it. (16)

Title VI Obligations

FCC should simply codify the Cable Act requirements applicable to OVS. (17) Parity with cable operators is the key.

PEG, Leased Access

OVS operator should be allowed to work out solutions to cross-franchise problems as cable systems do. (18) Unaffiliated video programmers must be required to include "must-carry" channels as part of their basic packages. (19) If a broadcaster elects retransmission consent, then each video programmer should be required to negotiate its own agreement. (20)

Cross-subsidization, Cost Allocation

Cost allocation is not necessary because it is not relevant to OVS pricing. (7) Only issue is cross-subsidization, which can be addressed through current rules on LECs. (8) Any common cost issues should be addressed separately. (9) Part 64 works reasonably well, but any fine-tuning should be done later. (9)

Other

No formal notice of intent to establish OVS should be required, as Congress rejected a similar proposal. (21) If notice is in the public interest, requirements should be minimal. (21) Certification process should be simple and straightforward. (22) Strongly opposes "facially proper" determination - once approved, should be presumed valid. (23)

COMMENTS OF HOME BOX OFFICE

Non-Discrimination

Video Programming Providers

Contracts should not be made public. (3, 21, 22)

Program access rules should apply to the relationships between OVS operator and programmers and between programmers and OVS packagers. (21, 22)

Channel Capacity

Measurement of capacity should separate analog from digital (one-third requirement should apply separately to each). (2, 5-6)

Where demand exceeds supply only after initial allocation, revisions to allocation should not be required. (2, 7)

Channel Sharing

Programmers must retain ultimate control over use of programming, and no programmer should be required to include its programming in a channel sharing arrangement. (3, 23)

Marketing and Subscriber Information

All programmers must be carried on the navigational device used by the operator and presented in a non-discriminatory manner. (3, 13-16) Each program service's unique branding should be carried on the program display and navigational device. (3, 17) The non-discrimination requirement extends to the use of other material and marketing activities. (18)

Title VI Obligations

PEG, Leased Access, Must-carry

No "must-buy" requirement should be imposed. (2, 10-12)

Cross-subsidization, Cost Allocation

Rates for access to OVS capacity should be cost-based. (20) There should be different prices for analog and digital capacity. (20) A rate card should be published. (3) Rates charged for inclusion in an OVS package should be left to negotiation between the parties. (22)

Other

All video dialtone systems should be required to convert to one of the regulatory schemes available to LECs. (4)

The FCC should not set technical standards to promote access to OVS, but should not allow OVS operators to use technical requirements to discriminate. (8)

COMMENTS OF VIACOM

Non-Discrimination

OVS operators should be allowed discretion to structure carriage rates, terms, and conditions, subject to non-discrimination rule. (13)

Video Programming Providers

Non-LECs should be allowed to be OVS operators. (iv, 6) Cable operators should be precluded from taking any capacity on OVS unless it is otherwise unclaimed. (iv-v, 10) Safeguards are necessary to prevent discrimination against unaffiliated video programmers. (14)

Channel Capacity

OVS operators should have discretion in meeting allocation requirements. (iv, 8) To that end, FCC should simply adopt rule that "prohibits discriminat[ion.]" (8) Operator should be allowed to allocate capacity to its affiliated programmer. (11) If affiliate's capacity exceeds one-third cap, operator should be required to make more capacity available to non-affiliated programmers. (12)

Digital and analog capacity should be determined separately. (9) Operator should be allowed to control more than one-third total capacity if there is no excess demand. (v) Broadcast channels should be excluded from counting total capacity. (v)

Channel Sharing

Programmers should have right to control their own services. (v) Program packagers should have opportunity to compete. (v, 15) Program service carried on shared channels should not be counted against the one-third statutory cap. (16)

Marketing

Operator should be allowed to market all programming offered. (v) Non-discriminatory treatment of navigational devices and channel menus should be required. (17)

COMMENTS OF NARUC

Non-Discrimination

LECs should be required to create OVS separate subsidiaries. (5)

Cross Subsidization, Cost Allocation

FCC should immediately initiate a joint board to address cost allocation/separation issues raised by OVS. (1) This is essential to ensure that "rates, terms and conditions" are non-discriminatory. (6) Ratepayers should not subsidize LEC competitive offerings. (6)

Other

Reporting requirements should be implemented to monitor LEC provision of OVS with respect to pole attachments and channel capacity. (1, 5)

**COMMENTS OF NEW YORK CITY
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS**

Non-Discrimination

The statutory language expressly prohibits non-LECs from becoming OVS operators. (3-5) The legislative history accords with this interpretation. Id.

Title VI Obligations

OVS operators should be required to design their systems to duplicate the incumbent cable operator's PEG obligations in each cable franchise jurisdiction in which the OVS operator provides service, including any modifications thereto. (6)

The FCC should require OVS subscribers to purchase a basic tier of must-carry and PEG channels. (8)

**COMMENTS OF THE STATE OF CALIFORNIA
AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

Non-Discrimination

Market incentives are insufficient to ensure just and reasonable rates. (6) There should be no presumption of reasonableness with respect to rates, terms, and conditions of carriage. (6) At a minimum, the OVS operator should not be allowed to charge non-affiliated programmers rates greater than those it charges its affiliates. (6)

Video Programming Providers

Notice and enrollment procedures should be widely disseminated. (9)

Channel Sharing

Channel sharing and channel positioning are related issues, and the non-discrimination requirement should apply to both. (7) It may not be desirable to allow OVS operators to determine whether channel sharing should be required. (8) It may be preferable for another entity to make the decision. (8)

Marketing

An operator's advertising of affiliated programming should not be barred. (10) OVS operators should be prohibited from unreasonably discriminating in favor of themselves or their affiliates. (11)

Title VI Obligations

PEG, Leased Access, Must-Carry

Supports the FCC's tentative conclusions. (7)

Cross Subsidization, Cost Allocation

Supports establishment of cost allocation procedures. (12) Amendments to Part 64 should be filed prior to OVS certification. (12)

Other

Encourage negotiated settlements of disputes. (13-14)

**COMMENTS OF THE TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

Non-Discrimination

Video Programming Providers

The TIA claims that the OVS concept will fail to establish real competition in the video services marketplace if it is too regulatory. (1) The regulatory scheme imposed on OVS over-burdensome. (i)

New entrants into the video services marketplace face a significant task in seeking to displace an entrenched incumbent. (i) New entrants should be afforded maximum flexibility and access to programming so that they might challenge the incumbents. (i) The Commission must remove regulatory barriers and foster a competitive climate. The telephone companies will be unable to compete with cable operators without the removal of regulatory barriers and uncertainties. (3)

TIA suggests that the Commission employ a two-pronged approach: (a) apply the regulatory forbearance provisions of the 1996 Act to remove restrictions on OVS; and (b) zealously apply the program access rules imposed by the 1992 Cable Act. (3-4)

**COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE**

Non-Discrimination

Video Programming Providers

In the context of the Commission's video dialtone proceedings, the NYDPS stressed the need for a level playing field during the transition period to full competition. (1-2) NYDPS maintains that disparate regulatory treatment of the telephone and cable industries would undermine sound public policy. (2)

The challenge for the Commission will be to promulgate rules that maintain a balance between OVS eligibility and operational requirements and the full range of objectives for video and telecommunication as set forth in the 1996 Act. (3)

NYDPS supports final rules regarding matters of state and local interest that would: (1) confine the opportunity to qualify for OVS status to LECs; and (2) recognize the opportunity for cable operators to distribute programming on OVS channels subject to limitations in the event that third party demand for channels does not exceed capacity. NYDPS further supports detailed, minimum LEC certification requirements. (3-4)

Channel Capacity and Channel Sharing

NYDPS emphasizes that it is critical that the rules ensure that channel capacity is freely and fairly available. (5) The rules should contain specific requirements by which an OVS operator's obligations to make channels available on a non-discriminatory basis on reasonable rates, terms and conditions may be monitored. (5) OVS status should not affect the jurisdiction of a state commission over the use of such system for intrastate communications. (5-6) Commission rules should provide that OVS operators may participate in channel allocation and in the selection of programming to be provided on shared channels. (5)

Title VI Obligations

PEG, Leased Access

The rules adopted in the Commission's proceeding should be carefully and narrowly crafted so as to clearly distinguish the regulatory characteristics of an OVS operator from those of a cable operator and a telecommunications carrier. (3) This distinction should be made consistent with traditional non-federal interests in public, educational, and governmental ("PEG") access channels along with the management of public streets and rights-of-way and state jurisdiction over intrastate communications. (3) The LEC should be obligated to carry the same PEG access channels that are available in the franchise area. (9) Absent any agreement involving the franchising authority, the OVS operator should be

subject to the same terms and conditions applicable to the cable operator in an existing franchise. (9)

Separate Subsidiaries

The NYDPS urged the Commission to require telephone companies to provide video programming through separate subsidiaries subject to defined and consistent cost allocation guidelines in its video dialtone proceedings in order to guard against the use of telephone service revenues for video transport facilities or video programming. (2)

Cross-Subsidization, Cost Allocation

OVS operators must offer reasonable cost-based rates for channels on both a per-channel and group basis, and provide billing and other services necessary to make subscriptions to any channel, or package of channels, a practical alternative for the subscriber. (4) NYDPS supports a separate rulemaking concerning cost allocation issues. (5)

Cost Allocation Manuals must be modified to include the non-regulated open video costs; however, this need not be spelled out as a separate requirement for certification. (8)

Other

The Commission's rules should provide that disputes may be resolved by state regulators instead of the Commission, should the parties so elect. (5) In states like New York, disputes arising between OVS operators and municipal franchising authorities should be subject to resolution by the state Commission. (11)